



that a Motion for Delayed Appeal was also filed in 2010, and that it was denied *sua sponte* by the Ohio Court of Appeals. Finally a Motion for Delayed Appeal was denied by the Ohio Supreme Court on February 16, 2011. *State v. Howard*, 127 Ohio St.3d 1544 (2011).

Although the Petition is not specific as to the reasons Howard's efforts in the state courts to attack his convictions - 16 years after he pleaded guilty and was sentenced - were not permitted, this Court can only assume he did not show adequate reasons for his delay or did not otherwise comply with deadline requirements under Ohio law.<sup>3</sup> *See, e.g., Simpson v. Sparkman*, 94 F.3d 199, 203 (6th Cir. 1996)(federal habeas court should assume state court which is silent concerning reason for denying claim applied relevant state procedural rules in doing so). It is obvious Howard was procedurally barred from raising the grounds in the state court that he seeks to raise herein.

If a procedural bar in the state court exists, this Court will not consider the claims unless a petitioner establishes adequate cause to excuse his failure to raise the claims and actual prejudice to him. *Riggins v. McMackin*, 935 F.2d 790, 793 (6th Cir. 1991)(citing *Murray v Carrier*, 477 U.S. 478, 488 (1986)); *see also, Coleman v. Thompson*, 501 U.S. 722, 735 n.1 (1990). No such showing is even suggested by the Petition.

Even absent Howard's procedural default, his Petition is patently untimely under 28 U.S.C. § 2244(d)(1), which places a one year limit to file a habeas action after the conviction becomes final. His 2010 Motions for Delayed Appeal and postconviction motion - all obviously unavailing because of their gross untimeliness - cannot "retrigger" the statute of limitations for bringing a federal habeas action. *See, Searcy v. Carter*, 246 F.3d 515, 519 (6<sup>th</sup> Cir. 2001)(filing of delayed appeal to Ohio

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<sup>2</sup> (...continued)  
Guilty Plea and Vacate Conviction and Sentence. *See, State v. Jeffrey L. Howard*, CR-94-313087,  
[http://cpdocket.cp.cuyahogacounty.us/p\\_CR\\_Docket.aspx](http://cpdocket.cp.cuyahogacounty.us/p_CR_Docket.aspx)

<sup>3</sup> *See Ohio Rev.Code* § 2953.23, regarding limited exceptions to 180 day deadline for filing postconviction relief motion; *see also, Ohio R.App.P.* 5(A)(2), regarding requirement that a defendant provide adequate reasons for filing direct appeal outside 30 day time limit.

Supreme Court does not cause federal habeas statute of limitations to begin running anew); *Robinson v. Moore*, No. 00-4348, 20 Fed.Appx. 358, 2001 WL 1136056 (6th Cir. Sept. 19, 2001). Further, none of the other circumstances set forth in 28 U.S.C. § 2244(d)(1) is claimed to apply, and there is no suggestion of any other basis for tolling the one year statute of limitations. Therefore, the petition would be subject to dismissal as time-barred in any event.

Accordingly, the Petition is denied and this action is dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed.R.App.P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan  
PATRICIA A. GAUGHAN  
UNITED STATES DISTRICT JUDGE

Dated: 4/16/12